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02-6235-04	"JUDGEMENT" as entered by Judge Jennifer B. Coffman, U. S. District Court for Eastern District of Kentucky-Lexington Division, on 09/25/02	5
02-6235-23	"ORDER" pursuant to opinion of JJ. CLAY and GIBBONS; CLELAND sitting by designation, affirming Exhibit 02-6235-04 hereinabove, entered 05/02/03	8
02-6235-25	"ORDER" denying filing of "PETITION FOR EN BANC DETERMINATION", entered 05/29/03	15

CERTIFICATE OF SERVICE

COMES THE PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, and certifies that I have on this, the 5th day of June, 2003, served one (1) true and complete copy of the foregoing "MOTION FOR LEAVE TO FILE AMENDED PETITION FOR EN BANC DETERMINATION", upon lead counsel of record for each and every opposing party, via "UNITED STATES MAIL-FIRST CLASS", postage pre-paid, and in that manner as follows:

(Listing of served Parties and/or their respective Counsel-of-Record are omitted from instant Petition for Writ of Certiorari for the purposes of economy & handling by Court. **See official record for listings**.)

s/ James G. Akers

JAMES G. AKERS, *Plaintiff-Appellant*
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

[END OF DOCUMENT]

Case Number: 02-6235

IN THE

United States Court of Appeals for the Sixth Circuit

JAMES G. AKERS,

Plaintiff-Appellant,

v.

CAROLYN P. BISHOP, ***et al,***

Defendants-Appellees.

On Appeal from the United States District Court for the Eastern District of Kentucky-Lexington Division

AMENDED PETITION FOR EN BANC DETERMINATION

This document was prepared by:
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I - INTRODUCTION

1. On May 2, 2003, an "ORDER" pursuant to the decision of a three (3) judge panel was entered in this Court - affirming the "JUDGEMENT" and "MEMORANDUM OPINION AND ORDER, DISMISSING" as entered in United States District Court for the Eastern District of Kentucky [Exhibits 02-6235-04 & 02-6235-05, respectively, Joint Appendix at pages 157-193].

2. As required by FRAP 35(b)(1), the petitioner, James G. Akers (hereinafter "Akers") hereby asserts as follows:

(A) The panel decision conflicts with **numerous** decisions of the United States Supreme Court including, **but not limited to**: *Abney v. United States*, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977) [see Akers' "FINAL BRIEF FOR PLAINTIFF-APPELLANT' at page 5 & 7]; *Cleavenger v. Saxner*, 474 U.S. 193; 106 S.Ct. 496, 501; 88 L.Ed.2d 507 (1985)[***id.***, page 22]; *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949) [***id.***, pages 2, 5, 6, 7, 12]; *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) [***id.***, page 26]; *Cruz v. Beto*, 405 U.S. 319 (1972) [***id.***]; *Ex parte Virginia*, 100 U.S. 339; 25 L.Ed. 676 (1879) [***id.***, page 22]; *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983) [***id.***, page 16]; *Ex parte Young*, 209 U.S. 123 (1908) [***id.***, page 27]; *Firestone Tire & Rubber Co. v. Risjord*, 101 S.Ct. 669, 66 L.Ed. 2d 571 (1981) [***id.***, pages 5, 7, &12]; *Ford Motor Co. v. Dept. of Treasury*, 323 U.S. 459 (1945) [***id.***, page 27]; *Great Northern Life Insurance Co. v. Read*, 322 U.S. 47 (1944) [***id.***]; *Haines v. Kerner, et al*, 404 U.S. 519, 520; 92 S.Ct. 594 (1972) [***id.***, pages 26 & 30]; *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) [Exhibit 02-6235-22, Joint Appendix, pages 850-854]; *Kennecott Copper Corp. v. State Tax Commission*, 327 U.S. 573 (1946) [***supra***, page 27]; *Monroe v. Pape*, 365 U.S. 167 (1946) [***id.***]; *Moor v. County of...*

Alameda, 411 U.S. 693 (1973) [***id.***]; *Myers v. Anderson*, 238 U.S. 368 (1915) [***id.***]; *O'Shea v. Littleton*, 414 U.S.488, 503; 94 S.Ct. 669; 38 L.Ed.2d 674 (1974) [***id.***, page 22]; & *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) [**id.**, page 16]. **Additionally**, the panel decision conflicts with **numerous** decisions of the United States Court of Appeals for the Sixth Circuit, including, **but not limited to**: *Azar v. Conley*, 456 F.2d 1382, 1384 (6th Cir. 1972) [***id.***, page 28]; *Byrd v. Wilson*, 701 F.2d 592, 594 (6th Cir. 1983) [***id.***, page 26]; *Hermansen v. Chandler*, No. 99-5943, 2000 WL 554058 (6th Cir. 2000); *Lucarell v. McNair*, 453 F.2d 836, 838 (6th Cir. 1972) [***supra***, page 28]; *Malone v. Colyer*, 710 F.2d 258, 260 (6th Cir. 1983) [***id.***, page 26]; *Rauch v. Day and Night Manufacturing Corp., et al*, 576 F.2d 697 (6th Cir. 1976) [***id.***, page 27]; & *Westlake v. Williams, et al*, 537 F.2d 857, 858 (6th Cir. 1976) [***id.***, page 28] and, therefore, consideration by the full court is necessary to secure and maintain uniformity of the court's decisions; **and**

(B) The proceeding involves questions of exceptional importance inasmuch as the panel's decision conflicts with **numerous** decisions rendered by other United States Courts of Appeals, including, **but not limited to**: *Boyce v. Alizaduh*, 595 F.2d 948, 951-953 (4th Cir. 1979) [***id.***, page 26]; *Collins v. Chandler Unified School Dist.*, C.A.9 (Ariz.) 1981, 644 F.2d 759 [***id.***, page 5]; *Cooper v. Molko*, D.C.Cal., 512 FR.Supp. 563 (1981) [***id.***]; *Dennis v. Chang*, C.A.9 (Hawaii), 1980, 611 F.2d 1302 [***id.***]; *Eades v. Sterlinski*, 810 F.3d 723 (7th Cir. 1986) [***id.***, page 22]; *McMillan v. Svetanoff*, 793 F.2d 149, (5th Cir. 1986) [***id.***]; *PT United Can Co. v. Crown Cork & Seal Co.*,138 F.3d 65, 71-72 (2nd Cir. 1998) [***id.***, page 5]; *Wiggins v. New Mexico State Supreme Court*, 664 F.2d 812, 815 (10th Cir. 1981) [***id.***, page 26].

3. Pursuant to FRAP 40(a)(2), it is hereby brought to the attention of the full Court that the panel has erred with respect to crucial matters of material fact, ***viz***, that:

(a) Plaintiff-Appellant James G. Akers ("Akers") is, or at any time relevant hereto has been, "a Kentucky resident" [see "ORDER" entered on May 2, 2003, page 2, line 1];

(b) "[T]he substantial part of the events giving rise to Akers's claims occurred in Lexington, Kentucky" [***id.***, page 3, ¶ 3];

(c) Akers' instant case is, in any manner whatsoever, an "appeal of a case already litigated in state court" [***id.***, page 4, lines 8 & 9]; &

(d) Akers "can prove no set of facts in support of his claims that would entitle him to relief" [***id.***, page 4, lines 18 & 19].

4. As well pursuant to 6 Cir. I.O.P. 40(a), it is hereby brought to the attention of the full Court that the panel has erred in Its interpretation and/or application of Federal law insofar as It "affirm(s) the district court's judgement for the reasons stated by the district court" [***id.***, page 3, lines 3& 4]. In other words, the panel affirms the district court's denial of Akers' rights, privileges, and immunities guaranteed by the United States Constitution including, **but not limited to**:

(a) Protection from the unconstitutional enactment and/or enforcement of **any** ***ex post facto*** law as provided by Article 1 - § 10 [Cl. 1] thereof [see Akers' "FINAL BRIEF FOR PLAINTIFF-APPELLANT' at FN7, page 16; & FN8, page 17];[1]

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[1] **This issue is of paramount public importance** in light of the position presented by Kentucky Assistant Attorney General D. Brent Irvin within this Court on January 2, 2003 [see Irvin's "Appellees' Brief", page 18, line 10, through page 19, line 3] coupled with the fact that, in 1974, the Kentucky Legislature abolished the statute of limitations on **all felonies** - raising the horrifying prospect that at any future point which Kentucky's prison population drops below an acceptable level of profitability - all Kentucky will then need to do is to plant "hand-picked" judges on its Court of Appeals and/or Supreme Court to "change the rules", **as retroactively as It wishes**,

so that **any person who has ever lived in or ever visited the State of Kentucky** could then become a target for prosecution and imprisonment.

(b) Guarantees and immunities against "double jeopardy" or, **in the instant case**, "multiple jeopardy" as provided by the Fifth Amendment [see Akers' "FINAL BRIEF FOR PLAINTIFF-APPELLANT' at FN7, page 16];

(c) Fundamental preservation of the "right of trial by jury" as provided by the Seventh Amendment thereof [*id.*, pages 28 & 29]; &

(d) Guarantees of "due process of law" and "equal protection of the law" as provided by the Fourteenth Amendment thereof [*id.*, page 16];

4. Yet further, pursuant to 6 Cir. I.O.P. 40(a) at lines 5 through 9, it is hereby brought to the attention of the full Court that the panel erred in Its interpretation and/or findings with respect to the "**facts**" of the case at bar – **specifically including, but not limited to**:

(a) That Akers is "a Kentucky resident" [see "ORDER" entered on May 2, 2003, page 2, line 1] when, in fact, save the various periods within which Akers was fraudulently and/or otherwise unlawfully imprisoned within Kentucky between November of 1995 and July of 2000, Akers has not been a "Kentucky resident" since he lawfully migrated back to the State of Tennessee in September of 1994;

(b) That "venue was proper in Kentucky because the **substantial** part of the events giving rise to Akers' claims occurred in Lexington, Kentucky" [*id.*, page 3, ¶ 3, emphasis added]. **Venue was not proper in the transferee court** and, while a "substantial part" of the acts "giving rise" to Akers claims may have occurred in Lexington, Kentucky, the **prevailing acts** committed by the Defendants-Appellees, **and those invoking federal law**, i.e., "interstate blackmail", "interstate extortion", "interstate kidnaping", "fraudulent extradition",

"interstate mail fraud", "interstate wire fraud", "interstate conspiracy", "unlawful imprisonment" within Davidson County [Tennessee] Detention Center,

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and "interstate civil rights intimidation" all occurred in Davidson County and/or Williamson County, Tennessee. Absent those specific "prevailing acts", none of the subsequent "events" within Central Kentucky either would have, **or could have**, even been possible.

(c) That Akers' herein case is, in essence, an "appeal" or "collateral attack" of "state court conviction" - thereby invoking the *Rooker-Feldman* doctrine [***id.***, page 4, lines 6-10]. The instant Federal case **is not an "appeal" nor a "collateral attack"** of Akers' state court convictions but, rather, a proper attempt to obtain redress for the illicit manner in which those convictions were obtained - **as clearly provided for** by the First and Seventh Amendments to the United States Constitution **in conjunction with** Title 18 U.S.C. § 1964(c), Title 18 U.S.C. § 1965(b), Title 42 U.S.C. § 1983, & Title 42 U.S.C. § 1985(3) [see, e.g., Joint Appendix, Volume Two, pages 525-662 thereof]. The conduct of the named Defendants-Appellees, the judgement of the United States District Court for the Eastern District of Kentucky, and affirmation of that judgement by the three-judge panel of the Sixth Circuit Court of Appeals **are, however, a "collateral attack" - upon the Constitution and laws of the United States of America**. Surely, any Federal justice could recognize that if ever willing to look beyond the simple facts that Akers is: (i) **not an attorney**; (ii) **not a prisoner** "in custody"; (iii) **not proceeding *in forma pauperis*** herein; and (iv) is, in fact, **neither** a "wife-beater" **nor in any manner** a "criminal".

(d) That Akers' has, **in any way**, attempted to assert a common law tort for "malicious prosecution" pursuant to Kentucky law inasmuch as: (i) it is clear

Akers no more has a remedy under Kentucky law than the Commonwealth of Kentucky had personal and subject matter with respect to Akers' prosecutions [see, e.g., Akers' "FINAL BRIEF FOR PLAINTIFF-APPELLANT' at FN7, page 16]; & (ii) it is equally clear

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that Akers both clearly understands that concept and recognizes the implications thereof [see, e.g., Exhibit 02-6235-22, Joint Appendix, Volume 3 at page 861, ¶ 2(G)(ii)].

II - LEGAL ARGUMENT(S)

1. The panel has "AFFIRMED" the District Court's judgement "for the reasons stated by the court" [see "ORDER" entered on May 2, 2003, page 3, lines 1-2]. In other words, the panel concurs with the opinion of the District Court as follows:

DISCUSSION - Standard of Review

(a) First, **the court acknowledges that**:

(i) "*pro se* pleadings are held to less stringent standard than those drafted by attorneys" (citing ***Cruz v. Beto***, 405 U.S. 319(1972); ***Haines v. Kerner***, 404 U.S. 519 (1972)); (ii) that "[t]he allegations in a *pro se* complaint must be taken as true and construed in favor of the plaintiff" (citing ***Malone v. Colyer***, 710 F2d258,260(6th Cir. 1983)); but then asserts (iii) that "[e]ven taking all of Akers' allegations as true, as dictated by ***Malone v. Colyer***, ...based on numerous defenses and legal doctrines asserted by the defendants, Akers' complaint and accompanying materials are frivolous and fail to state a claim upon which relief can be granted." [***id.***, Exhibit 02-6235-05, Joint Appendix, Volume One, page 171].

(b) **The court further acknowledges that**:

(i) "Fed.R.Civ.P. 12(b) provides for the dismissal of claims and parties for seven listed reasons. A motion to dismiss under Fed.R.Civ.P. 12(b)(6) for failure to state a claim "**should not be granted unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief**"; (ii) "[w]ell-pled allegations must be taken as true and must be construed most favorably toward the non-movant. (citing ***Conley v.Gibson***, 335 U.S. 41, 45-46(1957); ***Scheuer v. Rhodes***, 416 U.S. 232,236 (1974); ***Rauch v. Day & Night Mfg. Corp.***, 576 F2d 697 (6th Cir. 1978); & ***Westlake v. Lucas***, 537, F.2d 857 (6th Cir. 1976), respectively); & (iii) that "[a] complaint should be dismissed pursuant to Fed.R.Civ.P. 12(b)(6) only if there is no law to support the claims, if the alleged facts are insufficient to state a claim, or if on the face of the complaint there is an insurmountable bar to relief"; but then, **in contradiction of the specific language of those decisions**, (iv) "finds that Akers' claims are insufficient to state a claim on which relief can be granted and that his complaint should be dismissed with prejudice."

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(c) Obviously, Akers disputes that the district court has properly applied the required standard of review; **totally agrees** that the standards set forth in ***Cruz v. Beto, Haines v. Kerner, Malone v. Colyer, Conley v.Gibson, Scheuer v. Rhodes, Rauch v. Day & Night Mfg. Corp., & Westlake v. Lucas*** **clearly establish** the standard for review of Akers' herein case; and asserts that the specific language within those cases will speak for itself [see Akers' "FINAL BRIEF FOR PLAINTIFF-APPELLANT', "Argument VI", pages 25-28].

(d) With respect to the court's ridiculous assessment that "Akers' claims are insufficient to state a claim on which relief can be granted and...should be dismissed with prejudice", Akers asserts that, if that were true, then why is it that as of today – **more than two year after the filing of Akers' Complaint** – not

even a single Defendant has attempted to controvert even a single averment? **The real question is**: does the district court dispute the truth of Akers' allegations or whether TITLE 18 U.S.C. § 1964(c), TITLE 18 U.S.C. § 1965(b), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3) are valid and enforceable laws. Regardless of the District Court's intent, **again**, the specific language contained within ***Cruz v. Beto, Haines v. Kerner, Malone v. Colyer, Conley v.Gibson, Scheuer v. Rhodes, Rauch v. Day & Night Mfg. Corp., & Westlake v. Lucas*** will speak for itself.

DISMISSAL UNDER *HECK V. HUMPHREY*

(a) **The court surmises that**:

(i) "Reduced to its core, Akers' complaint...is an unambiguous attempt to collaterally attack his two state court criminal convictions and...'unlawful imprisonment'";

(ii) "These convictions have not been reversed or otherwise invalidated";

(iii) Akers is seeking $14 million in damages from the named defendants on the basis of unlawful imprisonment stemming from two state court convictions he alleges were obtained by fraud, jury tampering, extortion, blackmail and other specified illegal means";

(iv) "Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364 (1994), operates as a complete bar to Akers' claim. Heck v. Humphrey precludes the recovery of damages under...

...§ 1983 for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid";

(v) "Clearly, if Akers were to prevail on any one or all of his civil rights and/or RICO claims against any

one or all of the defendants named herein, an anomalous situation would exist whereby Akers could conceivably be recovering damages for actions associated with and resulting from allegedly unconstitutional convictions and imprisonment, while Akers' two state court criminal convictions contemporaneously remain intact, valid and undisturbed";

(vi) "This is precisely the type of inconsistent result which the United States Supreme Court ruled was prohibited in Heck"; &

(vii) "It is obvious from the attachments to Akers' 134-page complaint and 160-page memorandum of law that Akers views his complaint as a vehicle by which to relitigate, in full, every aspect of his two convictions and the prison terms he served as a result of his convictions".

(b) **Akers responds that**, although Akers considers any analogies between the case at bar and the case of ***Heck v. Humphrey***, 512 U.S. 477, 486-87 (1994) to border on the absolute asinine given the stark contrast in facts and circumstances, Akers does not object to the application of ***Heck*** herein **provided that the entire Supreme Court decision – including the opinions articulated by Justices SOUTER, BLACKMUN, STEVENS,** and **O'CONNOR** is properly considered [see, e.g., Exhibit 02-6235-22, Joint Appendix, Volume 3, pages 851-854]. Therefore, under the doctrine of that decision – **as a whole** – Akers is not subject to any of the criteria outlined by the District Court and as recapitulated within hereinabove ¶¶ (a)(i) through (vii).

"FAVORABLE TERMINATIONS" OF A PRIOR CRIMINAL PROCEEDING [AS] A PREREQUISITE OF A §1983 MALICIOUS PROSECUTION CLAIM

(a) **The District Court erroneously finds**:

(i) "Akers bases the instant § 1983, § 1985, and RICO conspiracy complaint on the fact that the Kentucky Court of Appeals reversed his assault and stalking

conviction in 1998 and in March, 2000, reversed his subsequent 1998 assault conviction"; &

(ii) Characterizes Akers' case as a "state tort claim for malicious prosecution" under Kentucky law;

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(b) **Akers responds that <u>it is precisely because of Kentucky law</u>** - or, at least, the selective, arbitrary, and capricious manner in which it is enforced - that Akers migrated back to Tennessee in September of 1994 and vowed to never return to Kentucky. Quite frankly, Akers could not care less about Kentucky law, will certainly never seek or expect any manner of justice under Kentucky law, and is neither subject to nor dependant upon Kentucky law [see, e.g., ***Rauch v. Day & Night Mfg. Corp.***, 576 F2d 697 (6th Cir. 1978), i.e.,

> "It is an elementary principle of jurisprudence that a court of justice cannot acquire jurisdiction over the person of one who has no residence within its territorial jurisdiction, except by {**8} actual service of notice within the jurisdiction upon him or upon someone authorized to accept service in his behalf, *or by his waiver, by general appearance or otherwise, of the want of due service.*" (see also, hereinabove ¶ I.4(d))]

<u>EFFECT OF THE JULY, 2000, GUILTY PLEA ON "FAVORABLE TERMINATION" REQUIREMENT</u>

(a) **<u>The district court asserts that</u>**:

"Akers' guilty plea, however, prevents him from collaterally attacking same in a subsequent civil suit. In <u>Duerr v. Kentucky & Indiana Bridge & R. Co.,</u> Ky., 116 S.W. 325 (1909), Duerr filed and action for malicious prosecution against the complaining witness after Duerr had pled guilty to a reduced felony charge. Much Like Akers, Duerr alleged: (1) that the complaining witness gave perjured testimony against him; (2) that there was a conspiracy among a group of individuals to deprive him of his liberty; and (3) that the only way to avoid a

felony charge was to plead to a lesser offense under duress and intimidation. In dismissing his malicious prosecution claim, the highest court in Kentucky opined as follows:

> But the appellant completely closed the door of the courts to his petition for redress when he admitted that he had pleaded guilty to a charge that was made unjustly, as he avers, against him. A person who comes into open court and admits on the record that he is guilty on the offense for which he is being prosecuted will not afterwards be heard to say the prosecution against him was procured by fraudulent methods. He will not be allowed to admit in the court that he was guilty, and in another to plead his innocence. His public admission of guilt in the criminal court was a complete and unanswered refutation of the charge that the prosecution against him was unfounded."

(b) In its FN10, **the District Court asserts that**:

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> "Akers submitted as Exhibit 'EEEE', in Volume II of his Appendix [page 634] a copy of the 'Judgement on Guilty Plea' which was entered of record in the Fayette Circuit Court on July 10, 2000. Notwithstanding his assertion that this plea was coerced, this court document clearly confirms that Akers' plea to 'assault under extreme emotion Disturbance was knowing and voluntary. The judgement states as follows:
>
> > "The court, finding that the Defendant understands the nature of the charges against him, that the Defendant understands the elements of the charges against him and the elements of any lesser included offenses and any defenses available to him at trial, that the Defendant's plea is voluntary, that the Defendant

knowingly and voluntarily waives his right to confrontation, and there is factual basis for the Defendant's plea..."

(c) **Akers responds that**: It must be understood, however, this "judgement" was entered by the very same Rebecca M. Overstreet who is named as a defendant in Akers instant Federal civil suit - under the clear and distinct threat from her and her co-conspirator, Lou A. Red Corn to the effect that without such a guilty plea, Akers would **for a third time** be tried for "First Degree Assault, would be held in the "hellish" Fayette County [Kentucky] Detention Center in lieu of an almost certainly insurmountable bonding requirement, and would almost certainly be **yet again** convicted of the outrageous charge of "First Degree Assault". Moreover, the record will reflect that Akers' entire "guilty plea" was the following statement:

Overstreet:	"What did you do?"
Akers:	"I slapped my wife and, **apparently**, caused her a neck injury." (emphasis added)

(d) **No responsible judge** would accept that statement as a guilty plea to **any felony offense**. And **no responsible prosecutor** would offer a defendant a plea bargain of Fourth Degree Assault (a misdemeanor punishable for a maximum of ninety days in jail and/or a fine of $250.00 under Kentucky law) [see, e.g., Exhibit 02-6235-11, Volume Two at page 662, ¶103] and, then, **three times** prosecute the defendant **for the very same act** as a First Degree Assault (a **Class B felony punishable for up twenty years** under Kentucky law).

(e) Yet further, the District Court has conveniently ignored the "doctrines" established by **North Carolina v. Pearce**, 89 S.Ct. 2089 (1969) [*id.*, FN4, page 484]; **Abbate v. United**

States, 359 U.S. S.Ct. 666, 672-673, 3 L.Ed.2d, 72 [*id.*, FN4, page 486]; **Menna v. New York**, 423 U.S. 61, 96 S.Ct. 241, 46 LEd(2d) 195 (1975) [*id.*, FN4, page 486]; **Abney v. United States**, 431 US 651, 97 S.Ct., 52 LEd(2d) 651 (1977) [*id.*, FN4, page 487]; & **Benton v. Maryland**, 89 S.Ct. 2056 (1969) [*id.*, FN134, page 658].

DISMISSAL UNDER *ROOKER-FELDMAN* DOCTRINE

(a) **The district court asserts that**:

(i) "This doctrine, 'a combination of the abstention and *res judicata* doctrines, stands for the proposition that a federal district court may not hear an appeal of a case already litigated in state court. A party raising a federal question must appeal a state court decision through the state system and then directly to the Supreme Court of the United States.' United States v. Owens, 54 F 3d. 271, 274 (5th Cir. 1995) (citing District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923)"; &

(ii) "The Rooker-Feldman doctrine clearly dictates that this court lacks the subject matter jurisdiction to entertain Akers' § 1983 and § 1985 claims, as well as the RICO claims, because they are a collateral attack on his two state court convictions."

(b) **Akers responds** by re-stating and reiterating his responses in hereinabove ¶ I.4(c).

ALTERNATIVE GROUNDS FOR DISMISSAL

Preclusive Effect of 1999 Civil Rights Order

(a) **The district court asserts that**:

(i) "The 1999 civil rights action [Case No. 5:99cv0173] stemmed from essentially the same set of facts and occurrences (through and including May 10, 1999) which form the basis of the instant complaint"; &

(ii) "While Akers has not proceeded in the instant

case in *forma pauperis* (IFP), case law governing IFP proceedings (which usually also involve *pro se* plaintiffs) is persuasive. Courts may appropriately dismiss IFP actions as frivolous when the action 'seek[s] to relitigate claims which allege substantially the same facts arising from a common series of...

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...events which have already been unsuccessfully litigated by the IFP plaintiff.' Wilson v. Lynaugh, 878 F.2d846, 850 (5th Cir. 1989); see also Curtis v. Boggs, 2001 WL 649735 (N.D. Tex.); Robertson v. Burger King Corp., 1994 WL 424431 (E.D.La)".

(b) **Akers responds that** apparently the district is just as ignorant (or pretends to be) with respect to the definition of "without prejudice" as is Kentucky Asst. Attorney General D. Brent Irvin [see, e.g., Exhibit 02-6235-18, Joint Appendix, Volume Three, FN8, page 787].

VARIOUS ALLEGED IMMUNITIES

(a) **The district court asserts that every single Defendant-Appellee** is shielded from civil liabilities in the instant case by either "judicial immunities", "quasi-judicial immunities", "witness immunities" and/or some other type of common law immunities.

(b) **They are not**, and that is made abundantly clear within Akers' "FINAL BRIEF FOR PLAINTIFF-APPELLANT', "Argument IV", pages 19 through 22, i.e., as follows:

Obviously, the District Court completely misconstrued the facts of the case – or, at least, the timing with respect to those facts – in that It has concluded that each and every one of the named Defendants is shielded from civil liability by either "judicial", "prosecutorial/quasi-judicial", or "witness"

immunities and, thus, accepts the Defendants' ridiculous propositions that, e.g.,

(i) By virtue of successful implementation and subsequent unlawful validation of **1993 conspiracies** in violation Title 42 U.S.C. § 1985, Defendants Miller, Witt, and "LFG Does 1 through 50" have somehow gained some sort of "immunities" [see "COUNT ONE", Akers' Complaint, Exhibit 02-6235-02, Joint Appendix, "COUNT ONE", page 110];

(ii) By virtue of their fraudulent testimony during fraudulent criminal trials of Akers in 1996 and 1998, Defendants Bishop, Fleming, Rushing, CBT Does 1 thru 40, Layne, Shannon, Vaughan, and Kelly acquired immunities for their **1994 conspiracies** in violation Title 42 U.S.C. § 1983 [*id.*, "COUNT(S) TWO thru FOUR", pages 111-113];

(iii) Defendants Bishop, Fleming, Rushing, Layne, Shannon, Kelly, SCC Does 1 thru 50, Witt, FCC Does 1 thru 30, Clark, and LFG Does 1 thru 60 have **all acquired immunities** for their **1994 "unlawful imprisonment"** of Akers [*id.*, "COUNT(S) FIVE, SIX, & SEVEN", pages 113-115] by virtue of fraudulent testimony of Bishop, Fleming, Rushing, Layne, and Shannon during fraudulent criminal trials of Akers in 1996 and 1998;

(iv) By virtue of their fraudulent testimony during fraudulent criminal trials of Akers in 1996 and 1998, Defendants Bishop, Fleming, Layne, Kelly, Rushing somehow acquired immunities for their **1994 predicate acts** in violation of Title 18 U.S.C. § 1961, ***et seq.***, ***viz***, "kidnaping", "unlawful imprisonment", "theft by unlawful taking (over $300.00)", "tampering with physical evidence", "wire fraud", "mail fraud", felonious "forgery", "theft by extortion", "blackmail", and

"extortion" [*id.*, "COUNT(S) FIFTEEN (a) thru (d), pages 120-124; SIXTEEN (a), pages 124-125; & EIGHTEEN (a), pages 127-128, respectively];

(v) By virtue of their fraudulent criminal convictions of Akers in 1996 and 1998, Defendants Red Corn and Overstreet acquired immunities for their **1995 predicate acts** in violation of Title 18 U.S.C. § 1961, ***et seq.***, ***viz***, "tampering with a witness" and "influencing a jury" [*id.*, "COUNT(S) NINETEEN (a) through (c), pages 128-131; & TWENTY (a), pages 131-133; & EIGHTEEN (a), pages 127-128, respectively]; &

(vi) Notwithstanding that their acts **could not, by any stretch of the imagination**, be considered "judicial", "quasi-judicial", **or in any other manner lawful**, the Defendants Red Corn, Overstreet, and Williams have immunities for their **1998 predicate acts** in violations of Title 18 U.S.C. § 1961, ***et seq.***, ***viz***, interstate "blackmail", interstate "extortion", and "civil rights intimidation" [*id.*, "COUNT TWENTY-ONE (a) thru (c), pages 133-135].

First, it is crucial to recognize that the history of "judicial immunities", "prosecutorial/quasi-judicial immunities", and "witness immunities" is demonstrative of the underlying purpose and intent of ensuring "good faith" within the legal process. In the instant case, however, the Defendants-Appellees have **intentionally misused and abused** the common law principles of "judicial immunities", "prosecutorial/quasi-judicial immunities", "witness immunities", and all other "absolute and/or qualified immunities" as illicit amendments to the United States Constitution and applied them for the self-serving, self-protecting, and self-perpetuating purposes of concealing **their own criminal acts**. Rather than effect the intended purpose of "good faith", they have been nothing more than licenses for these Defendants to "do as they well please" to perpetuate their individual and/or collective agendas – **with total and complete impunity and absolutely no accountability**.

Secondly, there are no constitutional, legislative, or statutory bases for such immunities – especially when, as in the

instant case, they are clearly at odds with specific provisions of the Constitution and duly-enacted Laws of the United States of America. Although it is clear that the Federal Courts have authority to implement policies with respect to the **due administration of justice, they do not have authority to sanction and/or pardon criminal acts** or, indeed, **any other act** in clear and distinct violation of the Constitution and Laws of the United States of America. **Not even the Chief Justice of the United States Supreme Court is lawfully immune to criminal or civil penalties** for such unlawful acts, **whether intrinsically or extraneously** associated with public office [see. e.g. ***McMillan v. Svetanoff***, 793 F.2d 149 (5th Cir. 1986), i.e., "Immunity is only granted when essential to protect the integrity of the judicial process"; "When the initiative...

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...and independence of the judiciary is not effectively impaired, the doctrine of judicial immunity does not apply"; "Judicial immunity should not be extended lightly or only because the actor is a judge. Before a judge is granted immunity, courts should examine the acts complained of to determine whether they are 'judicial'. If the acts do not involve the judicial process so that a fear exists that freedom of judicial decision-making may be stifled, the judge should not be free from suit". **See also**: ***Cleavinger v. Saxner***, 474 U.S. 193, 106 S. Ct. 496, 501, 88 L. Ed. 2d 507 (1985) (citing favorably Saxner v. Benson, 727 F.2d at 669, 674 n.2 (Cudahy, J., concurring)), i.e., "We must be equally hesitant in applying the doctrine to judges acting outside the traditional dispute resolution function"; ***Doe v. County of Lake, Indiana, et al***, 399 F. Supp. 553, i.e., "Despite its fundamental and efficacious purpose, the doctrine of judicial immunity is not absolute and unlimited; it does not immunize every state court judge in every lawsuit. On the contrary, application of the doctrine is restricted to its single objective: to protect judicial freedom in the delicate process of deciding civil and criminal matters on their merits. Where the initiative and independence of the judiciary will not be effectively impaired, courts have

refused to apply the doctrine [**6] of judicial immunity. For example, there is no official immunity from criminal liability; ***O'Shea v. Littleton,*** 414 U.S. 488, 503, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974), i.e., "The Supreme Court recognized long ago that a state court judge can be made to answer criminally for violating the criminal provisions of the Civil Rights Act. ***Ex parte Virginia,*** 100 U.S. 339, 25 L.Ed. 676 (1879). In addition, federal courts have held that application of the doctrine is restricted to the following areas: 1. immunity applies only when judges are faced with suits involving their judicial as opposed to ministerial or administrative duties, and 2. immunity applies only when officials are sued for damages"; & ***Eades v. Sterlinske,*** 810 F.2d 723 (7th Cir. 1986), i.e, "Judicial immunity is a creature solely of the common law. However, Congress did not abrogate the defense in enacting §§1 of the Civil Rights Act of 1871, 42 U.S.C.S. §§ 1983."]

Clearly, violators of Title 18 U.S.C. § 1961, ***et seq.***; Title 42 U.S.C. § 1983; and Title 42 U.S.C. § 1985 can not be permitted to escape liabilities by subsequently initiating **fraudulent criminal charges against their victim** and then fraudulently convicting him or testifying at his resulting trial.

III - CONCLUSION

It is quite a proper thing for the state and Federal courts to establish "common law" for the often necessary purposes of clarifying, implementing, enforcing, and/or resolving disputes with respect to the interpretation of, the Constitution and laws of the United States of America. It is quite another matter, however, for those courts to establish common laws which **clearly - if not blatantly - create conflict** with the Constitution and laws of the United States of America.

No court, nor **any justice of any court**, has the authority to override, undermine, and/or sanction violations of the Constitution and duly-enacted laws of the United States of America. Yet, that is precisely the results which the decisions of

the United States District Court for the Eastern District of Kentucky and three-judge panel of the Sixth Circuit Court of Appeals have yielded in this case. Those decisions **can not and shall not remain in effect** without challenge – **by every lawful means available to Akers**.

Akers has expended **extreme** time, effort, and resources in the proper presentation of the instant case. The Federal Courts can certainly continue to ignore and/or discredit Akers' pleadings if they so choose, but they should clearly understand, however, that **this overall matter shall – one way or another – at some time or another** – be properly presented to a fair and impartial jury for determination of the **real facts**, application of **proper law**, and meting out of **due justice**.

WHEREFORE, Plaintiff-Appellant, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, prays of this Court to "**GRANT**" Akers' herein request for hearing or rehearing en banc, whichever is appropriate under the unique circumstance of the instant case, together with all the relief provided by 6 Cir. R. 35(a), lines 4 through 7 thereof.

Respectfully submitted,

s/ James G. Akers
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